IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 77 OF 2005.

M/s. Sapana Real Estate, a Partnership Firm, duly constituted under the Indian Partnership Act, 1932 and registered with the Registrar of Firms, at Margao, having its Principal place of business at Nanu House, Varde Valaulicar Road, Margao, Goa, duly represented by its two Partners:-

(A) Shri Crisna Nanu Naik, son of Nanu Naik, aged about 70 years, businessman, residing at A. D'Costa Road, Margao, Salcete, Goa.

(B) Shri Sandesh Krishna Naik, son of Crisna Nanu Naik, aged about 40 years, businessman, residing at A. D'Costa Road, Margao, Goa. .... Petitioners.

Versus

1. Smt. Namrata N. Pandit, resident of Varde Valaulikar Road, Margao, Goa.
2. Miss Punam Pandit, resident of Mumbai-63.
3. Smt. Shaila Vaman Desai, resident of Pernem, Goa.
4. Shri Gurudatta Vaman Desai, and his wife;
5. Smt. Rovina @ Sweta Gurudatta Desai,

both residing at Mumbai.

6. Shri Ratnakar Vaman Desai
   son of late Vaman Desai,
   and his wife;
7. Smt. Lata Ratnakar Desai,
   both residing at Mumbai-63.
8. Smt. Leena Ravindra Kamat,.
9. Master Gourang Ravindra Kamat,
   student. Both residing at
   Mumbai – 63.
10. Smt. Seema Vithal Prabhudesai,
    and her husband;
11. Shri Vithal Prabhudesai,
    major of age, service;
    both residing at Socorro, Porvorim,
    Bardez, Goa.
12. Smt. Premabai Churi.
13. Mr. Janardhan Purushottam
    Churi (both deceased).
14. Mrs. Janardhan Chrui;
15. Mr. Ashok Purushottam Churi
16. Mrs. Pushpa Purushottam Churi
    all residents of Varde Valaulicar
    Road, Margao, Goa.
17. Mrs. Yasmeen V. Desai;
    and her husband
18. Mr. Vikas V. Desai,
    both residents of
    Aquem-Alto, Margao, Goa.
19. Mrs. Yojana R. Sunkhtankar
    and her husband;
20. Mr. Devidas @ Raju R.
    Sukhtankar, both residing
    at Ponda, Goa.
21. Mr. Lilesh R. Desai,
    residing at Aquem-Alto,
    Margao, Goa.
22. Miss Manda Purushottam
    Churi, resident of Varde
    Valaulicar Road, Margao, Goa.
23. Smt. Kamalabai Damodar
    Churi (deceased).
24. Smt. Malini Umesh Churi;
25. Master Siddesh U. Churi;

26. Master Kalpesh U. Churi;
27. Master Gourish U. Churi;
all resident of Varde
Valaulicar Road, Margao, Goa.
28. Shri Shivanand D. Churi,
resident of Margao, Goa.
29. Mrs. Anjali P. Kharande,
resident of Mumbai.
30. Smt. Kumud Suryakant Prabhu,
resident of Margao, Goa.
31. Shri Suryakant Prabhu,
resident of Margao, Goa.
32. Mrs. Aruna A. Naik dessai;
33. Mr. Avdoot R. Naik Dessai
both residents of Mumbai.
34. Mr. Pramod B. Kharande,
resident of Mahib, Mumbai.
35. Mrs. Ranjan S. Bodke;
36. Mr. Sunil A. Bodke,
both residents of Naupada Thane (West).
37. Mrs. Bharati S. Gangotkar;
38. Mr. Shekhar Gangotkar,
both residents of Bombivali
(East), Mumbai,
39. Mrs. Sujata P. Adarkar;
40. Mr. P. Adarkar,
both residents of Bombivali (E),
Mumbai. .... Respondents.

Shri D. Pangam, Advocate for the Petitioners.

Shri V. Rodrigues, Advocate for the Respondents No. 29 and 34.

CORAM: V. C. DAGA, J.

DATE: 27th JULY, 2006.

ORAL JUDGMENT:

Heard rival parties present before the Court.

Perused petition.

2. The previous order sheet reveals that this Court while hearing this petition for admission, by an Order dated 1st September, 2005 had directed notice to all the respondents with specific mention that the petition would be finally heard and disposed at the stage of admission. That is how this petition was taken up for final hearing at the stage of admission itself.

3. This petition is directed against the Order dated 9.02.2005 passed in Civil Suit No. 212/1992/I/Addl. by Civil Judge Senior Division, Margao; whereby the application seeking adjournment moved by the petitioner came to be rejected and the evidence of the petitioner was closed.

4. The learned counsel appearing for the petitioner submits that the trial Court has acted in excess of its jurisdiction in refusing to grant adjournment though it was sought on the ground of illness of P.W.2; inasmuch as the same was duly supported by medical certificate.

5. Per contra, learned counsel appearing for the respondents submitted that the impugned order was passed in exercise of discretion of the trial Court and as such this is not a fit case for exercise of writ jurisdiction of this court. He prayed for rejection of the petition.

6. Having heard the rival parties and looking to the dispute between the parties, in my considered view, the trial Court ought to have granted adjournment sought for a day or two to produce the witness, namely; P.W.2. The trial Court appears to have acted with little haste. However, considering the interest of justice and the fact that all other witnesses were allowed to be examined under the orders of this Court, it would be proper to permit the plaintiffs to examine P.W.2. The impugned Order dated 9.02.05 is, thus, quashed and set aside. Proceedings are remitted back to the trial Court with a direction to permit the parties to take affidavit of P.W.2 on record by way of evidence treating it as his examination-in-chief and further permit the opponents to cross-examine the said witness.

7. Advocates appearing for the parties before this Court, assured that no unnecessary adjournments would be sought by them. The trial Court is also expected to dispose of the suit as expeditiously as possible, at any rate within eight weeks from the date of receipt of copy of this order.

8. In the result, petition is allowed. Rule is made absolute in the above terms with costs quantified in the sum of Rs.2500/- to be paid to

the parties who were represented by their Advocates before this court. The amount of costs shall be shared by the respondents present.

V. C. DAGA, J.

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